88-868

Supreme Court, U.S.
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NO. _____

IN THE SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM, 1988

JAMES A. BRINGLE and
NORMA L. BRINGLE, Petitioners,

vs.

WASHINGTON STATE DEPARTMENT OF SOCIAL
AND HEALTH SERVICES, et al., Respondent.

PETITION
FOR WRIT OF CERTIORARI
TO THE COURT OF APPEALS STATE
OF WASHINGTON DIVISION II

James A. Bringle
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40pp

QUESTIONS PRESENTED FOR REVIEW

1. Did the Bringles and their Grandchildren possess a "liberty interest" in maintaining the stability and integrity of their familial relationship?

2. Should due process protection be extended to the type of family that the Bringles and their Grandchildren present?

3. Did the Superior Court State of Washington violate the Bringles due process and equal protection of law rights, by not allowing them to participate in the review hearing and by denying their motion to intervene and be heard?

4. Did the procedures used by the State to remove the Bringles grandchildren from their home adequately protect the due process rights of the Bringles and their grandchildren?

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INTRODUCTORY PRAYER

Petitioners, James A. Bringle and Norma L. Bringle, petitions this Honorable Court for Writ of Certiorari to the Washington State Court of Appeals Division II reviewing the judgement entered May 18, 1988, affirming the judgement of the Washington State Superior Court In and For the County of Pierce. No. 131566 and No. 131567, Re. The Welfare of Patrick James Bollinger and Jennifer Lynn Bollinger, October 28, 1986.

OPINIONS BELOW

The original judgement is not reported, but is Case No. 131566 and 131567 (In Re. Bollinger). The Court of Appeals Opinion affirming the original judgement is reproduced in the appendix. No. 10700-7-II and 10701-5-II Court of Appeals Division II State of Washington filed May 18, 1988.

JURISDICTION

The denial of review by the Washington State Supreme Court was entered on September 1, 1988. This petition has been filed within 90 days of that date pursuant to Supreme Court Rule 20.2. The jurisdiction of this Court is invoked under Title 28 U.S.C. & 1257 (a).

STATUTES INVOLVED

This Petition involves the Washington State Statutes 74.12.310RCW, 74.12.320RCW and 13.04.070RCW (Removal of dependent children from homes of relatives who are recieving Aid to Families with Dependent Children). Washington Court Rule CR 24 (a) (intervention as a matter of right).

CONSTITUTIONAL PROVISIONS

Equal Protection and due process clause of the Fourteenth Amendment to the United States Constitution.

STATEMENT OF CASE

The Petitioners James A. Bringle and Norma L. Bringle are the Maternal Grandparents of Patrick James Bollinger and Jennifer Lynn Bollinger. On August 24, 1985 Patrick and Jennifer were placed with the Bringles for the purpose of adoption. This placement was made after a favorable home study and after the Washington State Court determined it was in the childrens best interest. The Children and their grandparents then lived together as a family for one year. Then on August 14, 1986 the Bringles were served in their home in California with court orders from Washington State Superior Court to remove their grandchildren from their home and transport back to the State of Washington to be adopted by strangers. The orders were the result of a review hearing that was held on June 24, 1986. The Bringles were not advised of this hearing and no opportunity to be heard was given either in Washington or in

California. The Bringles were also not advised of any rights or given any written reasons for removal. The Bringles filed a X-Parte petition in the California Courts to try and restrain Washington from removing the children until they had a opportunity to be heard. The California courts declined to take jurisdiction on August 19, 1986 and the children were removed that same day. The Bringles then filed a complaint with the California Department of Social health Services and a meeting was held approximately 3 weeks later on September 10, 1986. The California authorities said the removal was against their wishes and that they were not responsible that Washington was. Then on September 13, 1986 the Bringles recieved a letter from the Washington States Attorney Generals office dated September 11, 1986 explaining who was responsible for the Childrens removal. The Bringles immediately filed 3 days later on September 16, 1986 in the Washington State Superior Court

a motion to have the June 24, 1986 review hearing orders vacated. This motion was denied by order dated October 28, 1986, the orders stated we were not entitled to notice and had no right to intervene. Motion for revision was denied by order dated January 23, 1987. Order was affirmed by Court of Appeals opinion filed May 18, 1988. Notice of appeal To the Washington State Supreme Court was filed on June 8, 1988. Review was denied by the Washington State Supreme Court on September 1, 1988. The Bringles argued they had special circumstances that would require due process protection and in the court of first instance pointed them out. The State did not agree and argued that the Bringles lacked any legal standing and had no interest other than what was vested by the state. In the Court of appeals the Bringles argued that their Constitutional rights had been violated and cited several Federal Cases in support, they also argued they were entitled to

notice and hearing and that intervention was a matter of right. The state did not agree and ruled the Bringles were not entitled to a notice and intervention was a matter of the courts discretion. In the appeal to the State Supreme Court the Bringles specifically asked the court to rule wether or not they possessed a liberty interest that was protectable under the due process clause. However the State Supreme court denied review without comment. This appeal ensued.

REASONS FOR GRANTING CERTIORARI

The Washington States Courts refusal to provide Due Process Protection to the Petitioners and their Grandchildren and their refusal to recognize they constituted a family with a liberty interest in protecting their relationship conflicts with the Federal Court of Appeals decision in River v. Marcus 696 F.2d. 1016 (1982) (2nd Cir). The Rivera case thoroughly analized the liberty interest and due process rights of a Custodial

relative similar to the Bringles. This case also presents issues of important Constitutional rights that have not been decided by this Court, but should be. This case also presents important elements that were identified, (but not resolved) in the United States Supreme Court Cases involving Smith v. OFFER, 431 U.S. 816, 97 S.Ct. 2094, 53 L.Ed. 2d. 14 (1977); Sherrard v. Owens, 484 F. Supp. 728 (W.D. 12, 14 Mich. 1980) aff'd 644 F2d 542 (6th circ.) (per curiam) cert. denied, 454 U.S. 823, 102 S.Ct. 120, 70 L.Ed.2d 103 (1981); Drummond v. Fulton County Department of Family and children Services, 563 F2d 1200, 1207 (5th circ. 1977) (en banc), cert denied, 437 U.S. 910, 98 S.Ct. 3103 57 L.Ed.2d 1141 (1978). The important elements necessary for due process protection that were identified in the above cases are present in this case. The Petitioners in this case are biologically related and their relationship was expected to

lead to adoption. Another exceptional need for this Courts review is that the administration of the Washington State Courts has been unreasonable, and violates the Petitioners equal protection and due process rights. It would not have over burdened the State to provide a hearing for the Bringles and their grandchildren. The family unit is the most important of all Social Structures in our Society and should be entitled to vigorous due process protection before the State intervenes and decides that they can no longer live together as a family and permanently terminates their relationship. This case does not present the typical Foster home removal situation. Unlike the typical foster relationship, the Bringles are biologically related as grandparents. Moreover the familial relationship between the Bringles and their grandchildren was established before any court order. Their extended fam-

ily was not created by the State but was natural in orgin, also there is no conflict with the interest of the natural parents in this case, because the parents had relinguished their parental rights. Furthermore the natural parents had requested that the Bringles be allowed to raise their children. The Washington State Department of Social Health Services does not have any procedural safegaurds at the administrative level that would provide due process to the Bringles. This makes it even more important that the State Courts provide a opportunity for them to be heard. The Supreme Court has frequently re-affirmed that "freedom of personal choice in family matters of family life is one of the liberties protected by the due process clause of the fourteenth amendment. The Constitutional conception of "family" has evolved to include

relationships among members of what has commonly become known as the "extended family". See Moore v. City of East Cleveland, 431 U.S. at 496-506,97 S.Ct. at 1934-1939 (a grandmother and her two grandsons); Prince v. massachusetts, 321 U.S. 158, 166, 64 S.Ct. 438, 442, 88L.Ed. 645 (1944) (an Aunt and legal gaurdian of her niece). The Courts have focused principally on the biological relationship between the parties when extending due process protections to persons not specifically fitting the parent child mold. In Moore v. City of East Cleveland the Court stated:

> Ours is by no means a tradition limited to respect for the bonds uniting the members of the nuclear family. The tradition of uncles, aunts, cousins, and especially Grandparents sharing a household along with parents and children has roots equally venerable and equally deserving of Constitutional recognition.----

431 U.S. at 504-05, 97 S.Ct. at 1938.

The Bringles should have been viewed by the State of Washington as an extended family who were entitled to due process protection. The United States Supreme Court Case in Smith v. OFFER, 431 U.S. 816, 97 S.Ct. 2094, 53 L.Ed. 2d 14 (1977), identified three important differences between the typical foster family and the natural family. First there is generally no biological relationship between foster parents and the children in their care. Moreover, while the natural family has its origins separate and apart from state law, the source of the foster family relationship is contractual in nature and is carefully circumscribed by the state in the foster care agreement. Finally, there is a virtually unavoidable tension between protecting the liberty interests of the natural

parents while also extending familial rights in favor of foster parents. This case is quite different, however, from the typical foster removal case. None of the factors weighing against the finding of a liberty interest in favor of foster parents is present in this case. The Bringles are related biologically to Patrick and Jennifer. They lived together as a family prior to any agreement with the state. Finally there is not the potential for conflict with the rights of the natural parents as they have relinguished their parental rights. In this case the State refused to recognize that the Bringles extended family was even entitled to any Constitutional protection, and refused to allow them to participate in the review hearing, and refused to allow them to intervene. In this case the state is relying on a erroneous assessment of the facts and the

Courts refusal to provide a opportunity to be heard for the Bringles was unreasonable. The Bringles could not explain or defend the charges of unfittness asserted against them because state regulations do not require that foster parents be apprised of these allegations. It is entirely possible under these procedures that the court may rely on evidence that the foster parents, if given a opportunity, could either refute or explain. Moreover, since the foster removal decision is not required to be in writing, the foster parent may never know wether the hearing panel mistakenly relied on erroneous information. Finally since the decision of the court is final (at the review hearing) the foster parent cannot challenge that decision in another forum. The risk for error is extremely great under circumstances like this. Especially in the Bringles case

since the state was relying on second hand information and the review hearing was held some 1200 miles away and was far removed from the Bringles and their grandchildrens lives. In Rivera v. Marcus 696 F2d. at 1029 the Court states:

> It is beyond peradventure that the nuclear family is not the only Constitutionally protected family unit---------Juveniles clearly have an interest in steady, continuing relationship with their parents or custodial relatives, and absent evidence of abuse or neglect, the state should ordinarily not intervene in the private realm of family life----------.

The Bringles took excellent care of their grandchildren and provided them with the much needed love and psychological and emotional support that the children needed. The chilrens improvement while in the Bringles care was tremendous, and this was evidenced by a letter from the childrens Doctor stating she recommended that the children should remain with their grandparents. See Appendix.

The Petitioners were recieving AFDC, (Aid to Families with Dependent Children) under 42 U.S.C. & 601 et seq. The Washington State Statute regarding removal of children from homes of relatives is 74.12.310RCW and 74.12.320RCW. The state of Washington did not comply with either of the above statutes for the following reason:

1. No effort was made to improve home conditions (if in fact there was any unsatisfactory conditions that did exist).
2. No search for other relatives was even made pursuant to 74.12.310RCW.
3. The summons and hearing requirements of 13.04.070RCW were not met. (see 74.12.320RCW, removal must be pursuant to 13.04RCW).

The State claims the removal hearing was pursuant to 13.34.210RCW, and no summons or notice of hearing is required to be given Custodial relatives. Therefore the States view families like the Bringles and their

grandchildren as ordinary foster families with no constitutional rights to due process. This conflicts with Rivera v. Marcus 696 F2d. 1016 (1982) (2nd circ.). In Rivera at 1025 the court stated:

> Indeed, we find no legally principled distinction between Mrs. Moores rights in East Cleveland and Mrs. Riveras in Hartford----------.

at 1027:

> The Courts due agree, though that due process fundamentally requires that the aggrieved party be provided with an opportunity to be heard at a meaningful time and in a meaningful manner------ the meaningfulness of the process must be considered in the context of three distinct factors: First the private interest that will be affected by the official action; Second the risk of an erroneous deprivation of such interest through the procedures used---------

Cited in Matthews v. Eldrige, 424 U.S. at 335, 96 S.Ct. at 903..47 L. Ed. 2d.18 (1976). In Regards to the Court of Appeals opinion in appendix, the court states the Bringles chose not to appear at the review hearing.

This is incorrect as the Bringles did not have a choice as they were not notified of the review hearing and did not even know where it was. The State claims they notified the Bringles by phone 7 days before the review hearing, but the Bringles have argued throughout the State Court proceedings that no notice was given them by anyone in Washington or anyone in California. The State also argued throughout the proceedings-that no notice was required. The Court of appeals opinion also states the Bringles did not file in the Washington Courts until three months after the June 24th 1986 review hearing. The State did not notify the Bringles of the June 24th 1986 review hearing orders until August 14th, 1986 almost 2 months after the review hearing. No effort was made by the State to remove the children until August 14,

1986. The State also did not notify the California authorities, who were supervising the placement nor did they advise the Bringles of any rights. Furthermore the Bringles efforts to protect their family did not end in California until August 19, 1986, when the California court refused to grant a restrain-order due to lack of jurisdiction. Even then the Bringles did not have the full scope of what was taking place until they recieved a letter from the Attorney Generals office on September 13, 1986 explaining who was responsible for removing their children. That letter was dated September 11, 1986. The Bringles then promptly filed in the Washington courts on September 16, 1986, approximately 3 days after recieving the letter. Since the Bringles were not notified of the Review hearing orders until August 14, 1986 it would have been imp-

ossible for them to file their objections in the Washington State Courts any sooner. The Court of Appeals opinion also gives the impression that the Bringles just suddenly appeared and challenged the placement of the children in a new pre-adoptive home. However the pre-adoptive home did not even exist until after the children were removed. The opinion also mentions we had contact with our daughter, but does not state the reason why. We contacted her after the State refused to help us with the childrens medical bills and only after we first asked them to contact the natural parents, so we could take advantage of the Military Insurance. The director of patient affairs at George Air Force Base had told us that the children were still entitled to the Military insurance for medical care as long as the natural parents were still in the service, regardless of whether or not the natural parents had relinguished their parental right, but

the only person that could sign them up for the insurance was the natural parents. The Court of Appeals opinion also mentions the Bringles were circumventing any adoption. This stems from the fact that the Bringles tried to go along with a experiment by the caseworkers that would allow the children to be adopted out by a local family that would allow the Bringles a continuing relationship. There were to many serious defects in the plan and the Bringles objected. The Court of Appeals opinion also states intervention was a matter of the courts discretion and not a matter of right. Intervention of right is governed by Washington Court Rule CR 24,(a). That rule states;

> Upon timely application anyone shall be permitted to intervene in an action: (1) when a statute confers an unconditional right to intervene; or (2) when the applicant claims an interest relating to the property or transaction which is the subject of the action and he is so sit-

> uated that the disposition of the action may as a practical matter impair or impede his ability to protect that interest, unless the applicants interest is adequately represented by existing parties.

The Bringles liberty interest in maintaing the stability and integrity of their familial relationship with their grandchildren is substantial and was not adequately represented by the existing parties. The existing parties were all seeking the childrens removal and none of the parties even recognized that the Bringles possessed a liberty interest in protecting their family. Furthermore the existing parties were far removed from the Bringles home and the childrens lives to properly consider the best interest of the children. Since the Bringles had lived with their grandchildren as a family for one full year they certainly had become the two most important people in the childrens lives, and for the court to

make a decision that would no longer allow them to live together as a family, without allowing them a opportunity to be heard is unfair to the children as well as the Bringles. The Court of Appeals opinion also makes reference to a review hearing order dated January 23, 1986, making it appear that the Bringles did not want to adopt their grandchildren. The Bringles were not aware of that order as the last one they recieved was dated September 30, 1985, that order states the Bringles are in the process of adoption and that the adoption process in California takes six months and that the orders for custody should be extended until November 14, 1985. Whether or not a review hearing was held on November 14, 1985 is unclear, however no adoption support was even requested by Washington until late November some three months after

the children were placed in the Bringles home. The California Social Service in a letter to the Washington Social Service Agency dated September 15, 1986 stated:

> In all fairness to the Bringles, the record reflects the children were moved to the Bringles home in August 1985 and no social work intervention was requested by your agency until late November 1985. Essentially, the Bringles were left to cope during the most difficult period of adjustment without any support system. Taking on two young abused children who were frightened and essentially unsocialized is not an easy task with an abundance of help, much less on your own.-------

This letter tried to explain some of the reasons for the stress that the Bringles were having. In any event as the children responded to their grandparents love and care the stress disappeared and should not have been used as a reason for determining that the Bringles were unfit. The children were not

monitored properly by the State and as a result of that a erroneous assessment of the facts was submitted to the courts, which resulted in the childrens removal. This was done without allowing the Bringles any opportunity to challenge allegations or any opportunity to confront and cross examine the caseworker. Once the children were removed they were immediately placed in a pre-adoptive home and no provision was made that would allow the return of the children to the Bringles home if they were later found to be fit for custody. The State proceeded and finalized adoption in June of 1987 while the appeal was still pending, and then argued the Bringles appeal was moot. They further argued that the Bringles

had no right to even appeal. Though the Bringles had filed in the various state courts they were denied due process in all of them. Not one court allowed them the opportunity to intervene and be heard and to cross examine caseworkers, present evidence and to have witnesses testify for them. The State violated its own court rule in regards to intervention and violated its own statute regarding removal of dependent children from homes of relatives. Furthermore the State should have given the Bringles a chance to correct any deficiency in their home that the state was concerned with before they permanently removed their grandchildren.

The Bringles were not responsible for the three month delay in filing motion to intervene, the Washington State Superior Court is responsible as they failed to properly notify the Bringles. They allowed the State to wait until the time for appeal of the June 24, 1986 review hearing had expired before serving the Bringles with a copy of the review hearing orders. Clearly the State of Washington is responsible and not the Bringles. Once the State realized their error they should have allowed the Bringles to intervene. The States contention that telephone notice, even if given, was sufficient to protect the Bringles rights would not meet the test of Matthews v. Eldrige, as cited on page 16 of this Writ. No opportunity was provided at a meaningful time or in a meaningful manner to be heard.

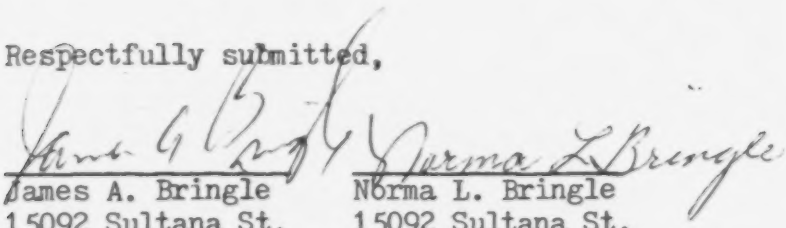
The state errored in removing the Bringles grandchildren pursuant to RCW 13.34.210, it should have been pursuant to 74.12.320 which states removal must be pursuant to chapter 13.04RCW. This requires a summons to the person having custody or control of the child, pursuant to 13.04.070RCW. No summons or notice was ever given to the Bringles. The above statutes would make the Bringles a party and give them a unconditional right to intervene pursuant to CR 24(a) state court rule.
This case presents claims that do not fit neatly into the bodies of law governing the rights of either foster or natural parents. The Bringles had assumed the major role of raising Patrick prior to any State intervention, then after Patrick was returned to the Bringles along with Jennifer they lived as a family for one full year, also the Bringles are biologically related. These unique factors bring the Bringles within the status of "parent".

When the State sought to remove Patrick and Jennifer from the protection and care of their grandparents, (de facto parents), it should have assured that the best interest of the children remain the foremost and ever present consideration. The States failure to allow the Bringles to fully and fairly participate in the review hearing, prevented them from asserting their concern, and that of their grandchildren, that their extended family relationship would not be abruptly severed by the state. The Bringles liberty interest is substantial and was not recognized by the state. The principles of Rivera v. Marcus should be applied to this case.

CONCLUSION

Wherefore, Petitioners prays this Honorable Court grant the Petition for Writ of Certiorari.

Respectfully submitted,



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Dated this 16th day of November 1988.

APPENDIX

Page

Court of Appeals Opinion-------- A

Washington State Supreme Court
Letter denying Review----------L

Letter from Department of the
Air Force (childrens Doctor).----M

IN THE COURT OF APPEALS OF
THE STATE OF WASHINGTON

IN RE THE WELFARE OF PATRICK JAMES
BOLLINGER and JENNIFER LYNN BOLLINGER.
MINORS,

No. 10700-7-II and 10701-5-II

Division Two
Unpublished Opinion

Filed May 18, 1988

PETRICH, J. -- James and Norma Bringle, the maternal grandparents of Patrick and Jennifer Bollinger, appeal an order denying their motion for revision of a dependency review hearing order. Two issues are before us on appeal: (1) whether grandparents have a right to intervene in a dependency proceeding following termination of the natural parents' rights; (2) whether grandparents, with whom their dependent children have been placed, have a right to notice of a dependency review hearing. We conclude that the Bringles do not have a right to intervene in the dependency proceedings.

Therefore, as nonparties, they were not entitled to notice of the dependency review hearing. Petitions for the dependency of Patrick and Jennifer Bollinger were filed October 19, 1984. At that time, Jennifer, age 2 months, was in Madigan Army Hospital suffering from meningitis and several partially healed broken bones. Patrick, age 1 1/2, was staying in California with his Grandparents, the Bringles. The Bringles recieved notice in early December, 1984 that an order would be entered requiring Patrick to be returned to Washington. On December 27, 1984, Patrick was returned to this State and orders of dependency agreed to by the parents were entered for both children. The Bringles filed a motion to vacate the dependency orders and for intervention, as well as a petition for custody of the children. No appeal was taken from the commissioners order denying their

motion, after an unsuccessful attempt at revision. Patrick and Jennifer were placed with the Bringles by court order on August 23, 1985. The order stated that the placement was temporary, pending final approval of the California Department of Social and Health Services. A Washington caseworker monitored the placement through an interstate compact filed with the California authorities. Parental rights to the children were terminated September 17, 1985, and permanent legal custody was granted to the Washington State Department of Social and Health Services. A dependency review hearing was held on January 23, 1986. At that time the court continued placement with the Bringles under the supervision of DSH. The court also ordered that the following services be offered or provided: 1. Coordination of services with San Bernardino County Adoption Services (child with Grandparents in California). 2. Adoption

support if requested by adopting family..... Adoption placement to be sought which would allow both maternal and paternal grandparents to have continued contact with child, if possble. On June 17, 1986, the Washington caseworker telephoned the Bringles and advised them that there would be an early review hearing on June 24, 1986, to determine whether the children should be removed from the Bringles home and returned to the state of Washington. The caseworker, the childrens guardian ad litem, and an assistant attorney general were present at the hearing. The Bringles did not appear personally or through a representative and no attempt was made to postpone the hearing. Upon consideration of the caseworkers report, guardian ad litems report, and oral argument, the court determined it would be in the best interest of the children to be returned to Washington and placed in a pre-adoptive home. The court based its determination on evidence which tended to

show that Mrs. Bringle was unable to handle the stress of caring for two small children, the Bringles were circumventing any other adoption possibilities, and that the childrens mother had been present in the home. After the Bringles unsuccessful attempt in the California court to seek letters of Guardianship of the children and to restrain their removal from California, thechildren were returned to Washington on August 19, 1986. On September 19, 1986, the Bringles served the Washington Department of Social and Health Services with an order to show cause why the June 24, 1986 dependency review order should not be vacated, the adoption proceedings should not be stayed, and the Bringles should not be granted leave to intervene. An order denying motion was entered on October 28, 1986. The Bringles subsequent motion for revision was denied on January 23, 1987, and this appeal followed.[1]

[1] Jennifer and Patrick were adopted pursuant to a decree entered on June 26, 1987. Their dependency proceeding was dismissed on August 5, 1987.

I. Intervention

Intervention of right and permissive intervention are governed by CR 24(a) and (b). The Bringles do not fall within the requirements of CR 24(a) as no statute confers on them an unconditional right to intervene, and they do not have a legal interest which is not adequately represented by the existing parties. See In re Baby Girl Coverdell, 30 Wn. App. 677, 680, 637 P.2d 991 (1981). "....(A) grandparents status does not per se confer an inherent right to custody of a grandchild..." Annot., Award of custody of child where contest is between childs grandparent and one other than childs parent, 30 ALR 3d 290,304 (1970).

The grant or denial of permissive intervention pursuant to CR 24(b) is within the discretion of the trial court and will not be reversed absent a showing of abuse of discretion. State v. Port of Peninsula, 89 Wn.2d 764,767,575 P.2d 713 (1978). CR 24(b), the permissive intervention rule, requires that in exercising its discretion, the court should consider whether the rights of the original parties will be unduly delayed or prejudiced. In conclusion of Law V, the trial court stated: "Intervention by the Bringles in this case is not proper as it would unduly delay and prejudice the rights of the children to be adopted." This conclusion is supported by several findings of fact which are based on substantial evidence contained in the record. An Appellate court will not disturb the findings of the trial court so long as they are supported by substantial evidence. In re Sego, 82 Wn.2d 736, 739,513 P.2d 831 (1973). "This deference to the trial court is particularly important in deprivation proceedings."

In re Hall, 99 Wn.2d 842, 849,664 P.2d 1245 (1983). The trial court did not abuse its discretion in denying the Bringles motion for intervention. The Bringles argue that the cases of In re Maurer, 12 Wn.App. 637, 530 P.2d. 1338 (1975) and In re Coverdell, 39 Wn App. 887, 696 P2d 1241 (1984) (Coverdell II), provide authority for their intervention in the instant case. However, neither case held that grandparents must be allowed to intervene in the dependency proceedings of their grandchildren. We also decline to so hold. In Maurer, the specific issue of intervention was never raised. The grandparents timely moved for a continuance of a deprivation of parental rights proceeding involving their grandchildren. The trial court denied their motion for continuance. The court of appeals remanded the case for a hearing on the grandparents fitness to recieve

custody of the children. In re Maurer, 12 Wn App. at 639-40. In re Coverdell II, the court held that a foster parent was not allowed to intervene in a dependency proceeding. Referring to the Maurer decision, the court stated in a footnote: By this statement we do not mean to overule our decision in In re Maurer (citation Omitted) If a child is found to be dependent or if parental rights are terminated, the foster parent or other custodian should be heard on the issue of custody..... In re Coverdell, 39 Wn App. at 890, n. 2. In the instant case, although the Bringles were not entitled to intervene, they did have a opportunity to be heard on the issue of custody. Their initial motion for intervention was filed more than 16 months prior to the June 24, 1986 hearing. Their second motion was not filed until three months after the hearing at issue in this case. They recieved a courtesy notice of the June 24, 1986

hearing, but chose not to appear and present evidence, not to ask for a continuation and not to move for intervention at that time.

II. Notice

As non-parties, the Bringles had no rights to recieve notice of the June 24, 1986 hearing. The juvenile court has exclusive original jurisdiction of dependency and termination proceedings. RCW 13.04.030. The Superior court will defer determination of custody matters until the juvenile court has fully entertained the dependency matters. See In re the Marriage of Perry, 31 Wn. App. 604, 608, 644 P.2d 142 (1982). The June 24 hearing was a dependency review hearing under RCW 13.34.210. This Statute provides that when parental rights have been terminated and a child has not yet been adopted, the (juvenile) court shall review the case every six months. Contrary to appellants contention the hearing does not fall within the notice requirements of the Uniform Child Custody

Jurisdiction Act. RCW 26.27.010 et seq. The hearing was pursuant to RCW 13.34.210 and falls within the notice requirements provided for in JuCR 11.2 JuCR 11.2 provides that a notice may be given by any means reasonably certain of notifying the party, including telephone. Although the Bringles were not entitled to notice, the June 17, 1986 telephone call by Lenore Martineau, explaining the time and the date of the dependency review hearing would satisfy the notice requirements of JuCR 11.2. Affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Petrich, J.

THE SUPREME COURT
State of Washington

September 1, 1988

Ms. Patricia Cone
5501 Sixth Avenue
Tacoma, Washington 98406

Mr. James Bringle
P.O. Box 95
Hesperia, Ca. 92345

Honorable Kenneth O. Eikenberry
Attorney General
Ms. Deborah Mull, Asst.
901 Tacoma Avenue S., Suite 317
Tacoma, Washington 98402

Re: Supreme Court No. 55273-8 - In re the Welfare of Patrick James Bollinger and Jennifer Lynn Bollinger. Court of Appeals No. 10700-7-II.

Counsel: The above entitled petition for review was considered by the Court on its August 31, 1988, petition for review calender. The Petition was denied by order number 181/106 filed on September 1, 1988.

Very Truly Yours

Steven P. Helgeson
Deputy Clerk

DEPARTMENT OF THE AIR FORCE
USAF HOSPITAL GEORGE (TAC)

Reply to Attn of: SGHMP 15 August 86

Subject: Patrick and Jennifer Bollinger, D/S, D/D, ADA

To: Whom It May Concern

1. I am writing this letter to inform you that I have followed these two children, Patrick and Jennifer Bollinger, since 3 September 85 to date. They both have shown tremendous improvement in their behavior since they have been in their grandparents' care. Patrick and Jennifer were very withdrawn, anxious and scared when they first came. But this last visit, they were very cooperative, carried on a conversation, and friendly. Patrick has gained a lot of weight (from 15th % of Last September 85 to 15 % this visit).

2. I recommend that these two children stay with these grandparents so that they could

-M-

continue to develop mentally, emotionally, and psychologically. It would be very traumatic to them if they would be transferred to another home; this might cause them to regress emotionally, lose appetite due to depression, and would eventually fail to gain weight.

3. If I can be of further help, please contact me at 619-269-3853.

Luisa F. Barile, Lt Colonel, USAF, MC
Chief, Pediatrics